Stresskin Products Co., Division of Tool Research and Engineering Corporation *and* Sheet Metal Workers' International Association, Local Union No. 170, AFL–CIO. Case 21–CA–9614

June 30, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On November 17, 1971, Trial Examiner E. Don Wilson issued the attached Decision in this proceeding. Thereafter, General Counsel filed exceptions and a supporting brief; Respondent filed a brief in opposition to General Counsel's exceptions and in support, in part, of Trial Examiner's Decision, and cross-exceptions and a supporting brief; the General Counsel filed a brief answering, in part, Respondent's cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings,[1] and conclusions and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] We note and correct the following minor error in that section of the Trial Examiner's Decision entitled "Findings of Fact" which in no way affects the result in this case: The Trial Examiner inadvertently stated that Scott requested a negotiating session for October 27, 1970, rather than October 22, 1970.

[2] The result herein is concurred in by all members of the panel. However, in the circumstances of this case, Chairman Miller and Member Penello find it unnecessary to pass upon the Trial Examiner's comments with respect to the effect on Respondent's duty to bargain of the filing of an adequately supported decertification petition. Member Fanning would adopt the Trial Examiner's views without comment.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

E. DON WILSON, Trial Examiner: Pursuant to due notice, a hearing in this case was held before me on August 17, 18, and 19, 1971, at Los Angeles, California. A complaint and notice of hearing was issued by the General Counsel of the National Labor Relations Board, herein the Board, on April 23, 1971, upon a charge filed by Sheet Metal Workers' International Association, Local Union No. 170, AFL–CIO, herein the Union, on October 21, 1970, against Stresskin Products Co., Division of Tool Research and Engineering Corporation, herein Respondent. The complaint alleged that Respondent violated, in various ways, Section 8(a)(5) and (1) of the Act.

An attorney, Cecil E. Ricks, Jr., of Fullerton, California, sought to intervene on behalf of a Petitioner in an RD case whose petition had been dismissed. Request so to intervene was denied. He requested permission to file a brief herein and was advised he might do so and it would be considered. He filed a letter in which he stated he was, in substance, adopting the position of Respondent's counsel.

The parties fully participated in the hearing, with the exception of the Union. General Counsel and Respondent submitted excellent briefs on October 4, 1971. They have been fully considered.

Upon the entire record[1] in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent is a Delaware corporation engaged in the manufacture of thermal blankets, aircraft components, and other products and its principal place of business at all material times has been in Santa Ana, California. In its business operations it annually sells and ships goods and products valued in excess of $50,000, directly to customers located outside California. At all material times it has been an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION

At all material times, the Union has been a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

Primarily, the issue is whether Respondent, since on or about October 20, 1970,[2] unlawfully refused to bargain with the Union, certified as the exclusive bargaining representative of Respondent's production and maintenance employees on September 29, 1969,[3] and unlawfully withdrew recognition from the Union and failed to supply the Union with necessary information. In answering this, there must be determined whether, as alleged in the answer, there was on or about October 20, "a serious

[1] Mistakes in the transcript, obvious to me, will be obvious to reviewing bodies, if any.

[2] Hereinafter, all dates refer to 1970, unless otherwise stated.

[3] On this date, there were somewhat in excess of 125 employees in the unit. At the time of the alleged unlawful refusal to bargain, there were 434 employees.

question concerning representation," involving the Union's majority status because an RD petition was filed by an employee on October 20, which was subsequently found to have a sufficient showing of interest. Further to be determined is the validity of Respondent's defense, raised in its answer of May 1, 1971, for the first time, that since October 20, Respondent has had a good-faith doubt of the Union's majority, it being understood that there is no evidence or suggestion that Respondent possessed any union animus or engaged in any unfair labor practice other than the alleged unlawful refusal to bargain herein. Further, is the defense, first interposed by an amendment to the answer, permitted by me at the hearing herein, that, as of October 20 and at all times since, an impasse has existed between Respondent and the Union.[4] Lastly recited here, but early stated by Respondent's counsel at the hearing and in his brief, is the argument that the Board erred in not processing completely, but rather dismissing, the RD petition because of, or in connection with, the instant complaint.[5]

B. *The Dismissal of the RD Petition*

The RD petition was filed October 20. As noted, the original RC petition resulted in certification of the Union on September 29, 1969. Thus, the RD petition was timely filed and had a sufficient showing of interest.[6] In the meanwhile, there had been about 20 bargaining sessions and numerous informal conversations or meetings between the Union and Respondent. In June, the Union filed an 8(a)(5) charge with the Board. Subsequently, on July 30, the Regional Director dismissed it, there not being sufficient evidence to controvert Respondent's position that an impasse had arisen. It was on the certification's anniversary date that the parties next again met. More or less of meetings until October 14 will be mentioned by me later, as will the Union's requests for necessary information from the Respondent on October 15 and later, and Respondent's partial compliance therewith and partial lack of compliance therewith. The RD petition having been filed, as noted, on October 20, and one of Respondent's labor consultant's having[7] advised Union Representative Scott on October 21 that, since an RD petition had been filed, continued bargaining would not be proper and that the parties "could not rightfully meet," the Union filed an 8(a)(1), (2), and (5) charge against Respondent.[8] The charge was dismissed by the Regional Director on November 27. The Union appealed this decision on December 18. On April 8, 1971, the appeal was upheld "as to the Company's refusal to bargain or to supply information essential for bargaining following the filing of a petition in Case No. 21–RD–982." The appeal from dismissal of the charge was otherwise denied.

The RD petition was dismissed by the Regional Director on April 23, 1971. The RD Petitioner's and Respondent's requests for review of the RD dismissal order were denied by the Board as raising no substantial issues on June 3, 1971. Respondent complains strongly against the simultaneous issuance of a complaint based on a charge which has effectively "blocked" the processing of the RD petition. He complains that by prestidigitation engaged in by the Board, the QCR had been made to disappear. Respondent states that the petition could not be processed, even though a QCR had been found to exist earlier, only because the Regional Director had been ordered to issue an 8(a)(5) complaint. Respondent urges that such use of the Board's processes "in this manner is unconscionable." He further urges that a "blocking" would be bad enough, but the "dismissal" of the petition "jettisoned" the employees' rights. Various court decisions are cited and discussed at length in Respondent's brief in support of its contention that the Board and Regional Director grievously erred in this regard. Respondent urges that I and the Board rectify the above processes of the Board by reinstituting the petition and expediting the election, should the Union still wish to represent the employees.

My simple answer here is that there is nothing for me to act upon with respect to the once live RD petition. The Regional Director dismissed it and the Board found no reason for reversing him. That is the end of this problem, so far as I am concerned. Obviously, I will not find the Board erred.

C. *Pertinent Background and Some Credibility Resolutions*

After a rather long hiatus, the parties met on September 29 and several times in October when, on October 14, Respondent presented what it described as a last and final offer, in writing, to Union Representative Scott. He said he would present it to the employees for a vote. This was done on October 14 and 15, the employees first asking various questions about the offer and then voting to reject it. Respondent was so notified and on October 15, Scott mailed and caused to be hand delivered to Respondent a letter setting forth the employees' rejection of Respondent's October 14 offer and requesting answers to questions raised by employees, and probably other information, to "enable us to properly represent the employees" in the unit. A reply was requested by October 22 and a request for a subsequent negotiation meeting on October 27 was made.[9] Jay Roper, Respondent's personnel director, phoned his labor consultants[10] October 15, and was told to open Scott's letter, though it was addressed to Respondent President, Clark Biggers, since Biggers was out of town. Roper did so and read the letter to Rea who

[4] General Counsel objected to the granting of permission so to amend. He was overruled but advised he would be listened to later should he need additional time to present evidence in rebuttal to such late offered defense. General Counsel made no request for additional time.

[5] A hearing was held in connection with the RD petition, Docket No. 21–RD–982, on December 15, 1970. At that hearing, the Hearing Officer noted that the petition was supported by a sufficient showing of interest based on an administrative determination. At that hearing, there was a stipulation as to the appropriate unit in the RD case which was the same as the previously found unit in which the Union was the certified bargaining representative. The RD petition had a different phrasing of the "appropriate unit."

[6] At least 30 percent of the 434 employees in the unit.

[7] Donald Rea.

[8] The latter's counsel contends this was "in whole or in part aimed to 'block' an election."

[9] A copy of this letter was sent to Donald Rea who, with Lewis Awalt, was a labor consultant for Respondent.

[10] Donald Rea & Associates.

advised Roper to prepare the requested information and deliver it to Rea. Roper pointed out that some of the information might not be promptly available but was advised to prepare what he could and was later told to deliver such information as was available to Rea. On October 21, the day after the filing of the RD petition, having learned that reports were circulating in the plant that employees had filed a petition with the Board, Rea phoned the Regional Office and was told an RD petition had in fact been filed.[11] If he was told more with respect to the showing of interest, I am certain he was mistaken in his recollection that he was also told there was no question as to "the sufficient showing of interest."[12] At *most,* he *might* have been told that the *number* of signatures in support of the petition *appeared* to be sufficient. I am skeptical that even such information would be revealed orally to only one of three parties to the RD case. Obviously, as of that time there, reasonably, could not have been an opportunity to check the authenticity of the signatures with Respondent's payroll, etc.[13] That same day, Rea called Scott and told him the RD petition had been filed and that information requested by the Union was available and could be picked up at Rea's office, and if not picked up it would be mailed to him.[14] Rea also said to Scott "that due to the question existing regarding majority representation, there was no need for *further* bargaining." According to Awalt, Rea stated that in view of the RD petition, Respondent and the Union "could not rightfully meet."[15]

In setting forth this background I have here, as I will elsewhere herein, relied on varying combinations of the testimony of Scott, Rea, and Awalt. As to some matters, frequently minor, Respondent's witnesses did not agree with Scott. I am satisfied no one of them intentionally misstated his recollection of the truth as to what transpired between the sides. In some instances the recollection of one side may have been clearer than the other. Unconscious bias may have induced faulty recall. I have examined their respective testimony in this light and have been much guided, in resolving the few material conflicts, by probabilities, e.g., I find it most improbable that Scott would, on October 15, tell Rea in substance that they had reached an impasse and he could see no need for further meetings, and on the same date hand deliver the letter referred to above, where further information was requested from Respondent for the purposes of continued collective bargaining and further negotiations were requested, by a date certain. Respondent's witnesses, Roper, Biggers, and Long, testified principally in connection with the claim of a good-faith doubt. They were generally mutually corroborative and their testimony received further corroboration from parts of the testimony of Rea and Awalt. Such testimony was uncontradicted.[16] I credit this testimony, much of which was hearsay and even hearsay on hearsay, for reasons later to be discussed. I find these witnesses were honest in testifying with respect to narrating the basis for and their arrival at a good-faith doubt as to the Union's majority status.

D. *Respondent's Defense That Since October 20, It Was Justified in Refusing to Bargain With the Union Because the Filing of the RD Petition Caused to Exist "A Serious Question Concerning Representation."*

As already found, the RD petition was filed on October 20 and in substance Rea told Scott of this on October 21, and at the same time advised him Respondent was thereby precluded from bargaining with the Union.[17] I find and conclude that the mere filing of an RD petition is, standing alone, no defense to this Respondent insofar as its refusal to bargain with the Union is concerned. There was a rebuttable presumption that the certified Union, even though more than a year had elapsed since its certification, continued to represent a majority of Respondent's employees. The bare filing of an RD petition did not even raise a "real" question concerning representation. See *William Penn Broadcasting Co.,* 93 NLRB 1104. I note that the "appropriate unit" as described in the RD petition is "All Factory Workers" which differs from the description of the certified unit and from the same unit stipulated to be appropriate at the RD hearing. Further, as of October 21, I am certain there had been no determination by the Board that the RD petition had even a 30-percent showing of interest. Admittedly, Respondent never saw the employee signatures in support of the petition and could not have *known* as distinct from *surmised* or had an opinion or belief that the petition was supported by any particular percentage of its employees on October 21.[18]

In footnote 2 of the Board's Decision of *Colonial Manor Convalescent & Nursing Center, A Division of the La Grange Land Corporation,* 188 NLRB No. 129, the Board said, "In reaching this conclusion we must emphasize that we do not rely to any significant extent on the fact standing alone that the employees filed a decertification petition." Thus

[11] He named Wilkerson *or* Abrams as the Board agent he spoke to.

[12] Thirty percent.

[13] There were 434 employees. The petition stated 400.

[14] It was picked up that day.

[15] Awalt had a continuing practice in Rea's office, in connection with phone calls, to listen not only to Rea but also the party on the other end whose voice came out of a "speaker box."

[16] I shall later refer to offers of proof further to corroborate such testimony which were rejected as being merely cumulative—*not* because, as the transcript indicates, they were "corroborative."

[17] On July 22, Respondent distributed to all employees a bulletin advising them that a "Decertification Petition" had been filed "by a substantial number of our employees" with the Board and that as a result of the petition there would be an election and there would be no further bargaining "until this question of majority representation is resolved" because "by law" Respondent would be precluded from "further negotiations and/or any form of a contract agreement" with the Union. I note this bulletin makes no reference to "good faith doubt of majority" or "impasse."

[18] At the hearing herein, it was "assumed" I issued a *subpoena duces tecum* to Respondent who served it on General Counsel, demanding production of the showing of interest, and that following a motion to quash the subpena by General Counsel, said motion was granted by me because the showing of interest was purely an administrative matter. Referring to the added defense of "good faith doubt" such would not be established by the showing of interest even if the petition were supported by more than 50 percent of Respondent's employees. The showing of interest was never seen by Respondent and *it* could not bear on Respondent's alleged "good faith doubt." Obviously, also, the "showing of interest" does not necessarily establish the union preference of the signers. It is noted that *this* petition has no check mark indicating a statement by the petitioner, J.D. Brittain, that the petition was supported by 30 percent or more of the employees in the unit and I note further, in passing, that it alleges there were 400 rather than 434 employees in the unit.

the mere fact that Respondent's representative, Rea, learned that Respondent's employees had filed an RD petition did not justify him in announcing to Scott, nor the Respondent's announcement to its employees the next day, that Respondent was in any way precluded from bargaining with the Union.

No *real* question concerning representation exists *merely* because an RC or RD petition is *filed.* Consequently, the *mere* filing of the RD petition herein on October 20, did not relieve Respondent of its duty, absent otherwise valid reasons, to bargain with the Union.[19]

E. *Respondent's Defense That It Refused to Bargain With the Union Because It Had a "Good Faith Doubt" That the Union Continued to Represent a Majority of the Employees in the Unit for Which It Became Exclusive Bargaining Representative More Than a Year Earlier.*

First, I emphasize that there is no evidence here of either independent unfair labor practices by Respondent or even of union animus.[20] It may have participated in hard bargaining and possessed strong views with respect to compulsory union membership, but there is no suggestion that, except as alleged herein by the complaint, Respondent has otherwise, at any time, violated the Act. Further, as already found, the refusal to bargain occurred more than a year after certification.

In *Southern Wipers, Inc.,* 192 NLRB No. 135, the Board stated:

> The principle applicable in the present situation has long been established. After the certification year has run, an Employer may lawfully withdraw recognition from an incumbent union because of an asserted doubt of the union's continued majority if its assertion of doubt is raised in a context free of unfair labor practices and is supported by a showing of objective considerations providing reasonable grounds for a belief that a majority of the employees no longer desire union representation.

The issue now presented to me is whether "objective considerations" existed which justified Respondent's "doubt" herein, etc.

I have stated that in its bulletin to the employees on October 22, Respondent made no reference to "good faith doubt" as a reason for refusing to bargain.[21] Indeed, Rea, in his affidavit to a Board agent, on November 13, made no reference to a good-faith doubt. It is a 10-page affidavit, in evidence, and Rea credibly testified such Board agent asked him no questions about "good faith doubt" or "impasse." This does not establish in my mind that good-faith doubt could not have existed or that there could not have been an impasse[22] upon which Respondent relied as reasons for not bargaining with the Union. I also have noted that the "defense of good faith doubt" was first raised in Respondent's answer on May 1. In many circumstances, such long delay in setting forth a defense might well be considered as convincing evidence that it was a mere afterthought or pretext. Being aware of this, I find, nonetheless, based on the credible and probative evidence, that Respondent possessed an unexpressed, to the Union or the Board, good-faith doubt of the Union's majority at the time it refused further to bargain with the Union or to supply it with requested information, necessary to the Union were it to continue to negotiate meaningfully with Respondent.[23] In his brief, General Counsel, as to the defenses of good-faith doubt and impasse, relies almost exclusively on the argument that the long delay in making such defenses known, establishes that they are mere "make-weights" or "afterthoughts" and lacking in substance.

To the contrary, having observed Respondent's witnesses with respect to "good faith doubt" and having heard the offer of proof in which Respondent's counsel "summarized," in many instances, in some detail, the offered testimony of named witnesses including almost, if not all, supervisors[24] as well as named employees, I am convinced that Respondent had such good-faith doubt.[25] It was based primarily on reports of supervisors, and in many instances of employees, to the upper echelon of management that the employees were making it clear in the plant and stating that a majority of the employees were dissatisfied with and did not want the Union as bargaining representative. Such reports reached a crescendo about the time the RD petition was being circulated and signed and about the time Respondent learned, without illegal means, that such petition was being circulated and then filed.

"And ordinarily evidence that employees reported or communicated to supervisors that they, the employees, wished to withdraw from the Union, absent any contemporaneous unfair labor practices, warrants a finding of good-faith doubt of majority." *Phil Modes, Inc.,* 159 NLRB, 944, 959. See also *Lloyd McKee Motors, Inc.,* 170 NLRB 1278, 1279; *Firestone,* 173 NLRB 1179, particularly footnote 5 of Trial Examiner's Decision.

I have noted that I credit the uncontradicted testimony of Respondent's director of administration, Jay F. Roper, its president, Clark Biggers, and Respondent's night superintendent, Floyd L. Long, as partially corroborated

[19] I have not ignored the fact that more than several weeks later, at the RD hearing, the Hearing Officer stated the petition was supported by a sufficient showing of interest, and that the parties stipulated as to an appropriate unit.

[20] There is no probative or substantial evidence that Respondent ever withdrew "recognition" from the Union.

[21] Nor did Rea state such reason to Scott on October 21.

[22] More on this later.

[23] In view of my findings and conclusions with respect to good-faith doubt, I consider it unnecessary to explicate further my finding that the requested information was necessary for such purpose. Respondent makes no contention to the contrary.

[24] Roughly, about 12.

[25] I rejected the offer of proof on the grounds that the testimony of so many additional witnesses would be merely cumulative. In this connection, it may be noted that Respondent's counsel said he was willing to have General Counsel call any or all of the persons whose testimony he summarized, and freely cross-examine, with no objection from Respondent even as to the scope of such cross-examination, assuming such to be at all reasonable. General Counsel refused such offer, insisting, instead, that he would only cross-examine if the witnesses first gave their direct testimony on the stand. The latter procedure might well have produced an almost interminable hearing with every likelihood, since I am convinced these witnesses had not been interviewed by the Board and destruction of their direct testimony was not probable, that they would merely have lent corroboration to the testimony given by earlier Respondent's witness in this regard.

by Rea and Awalt. Much of this testimony is hearsay or hearsay on hearsay. But it matters little whether the reports to hierarchy of Respondent were in fact true or untrue with respect to Respondent's good-faith doubt. They were relied on by it. Respondent does not here have to prove as a *fact* that the Union no longer represented a majority of its employees. It did not have to conduct a poll[26] of its employees. Nothing would have been gained by the testimony of the 434 employees. It is normal for all of us to base opinions or make day-to-day decisions on hearsay, e.g., newspapers, TV, reports of friends or enemies, *et al.* Under ordinary circumstances, a husband will or will not wear a raincoat or an overcoat solely because his wife has reported to him a weather forecast she may have heard on the radio while preparing his breakfast. It may turn out to be a warm, clear day. Even the President could not operate, if he were required to rely only on first-hand knowledge.

A good-faith "doubt" obviously differs from "certitude." As to a loss of majority by a Union, only the former and not the latter is required. Here, there was a presumption (rebuttable) of continued majority status by the Union, on the one hand, and, on the other, numerous and substantially identical reports from presumably trustworthy supervisors and employees that a majority of the employees no longer wished the Union to represent them. Certitude is not required in this situation. Respondent is not required to prove that it had rationally excluded all "fear" of error. Of course, the reports it received *might* have been wrong, in that they did not establish objectively the *factual* wishes or mental determinations of the majority of employees. But a reasonable man would reasonably rely on such overwhelming and consistent reports from persons in responsible positions and with their ears open to the statements of employees as to their states of mind with respect to the Union. I find it most natural that employees would vocalize their wishes or beliefs with respect to continued union representation at or about the times of the circulation of an RD petition and its filing with the Board. To act or believe in reliance on the multitudinous and apparently reliable reports of employee dissatisfaction with continued union representation, while not necessarily the same as to act without "fear" of error, i.e., with "certitude," does not mean Respondent acted or believed without "doubt" or belief as to the Union's continued majority status and the record is void of any evidence that the doubt was held in had rather than the established good faith of Respondent. The record makes clear that Respondent did not jump at straws in the wind in arriving at its doubt. Rather, Respondent received the repeated and almost identical reports, and then spent time not only in analyzing them but also in deciding that it had a good-faith doubt based on such apparently reliable reports.

It would be improper to burden this decision with all the details of reports of employee dissatisfaction which came to the ears of Respondent's hierarchy which, in turn, discussed them with its labor consultants before coming to a reasoned decision.

Reports of some employee dissatisfaction with union representation reached management as early as the spring and grew during the summer after the Union's charge had been dismissed and bargaining for a contract was for sometime nonexistent. During this time, a named former member of the Union's negotiation committee advised management that the Union was not maintaining its strength and that he had so advised Scott. Reports from supervisors and some employees continued to grow and came to the ears of management, occasioning many discussions on this matter by management. Not long before the RD petition was filed, many reports came to management that a "petition" was being circulated in the plant and management's labor consultants admonished management to have nothing to do with it and see to it that it was not circulated during working hours. In the evening of October 19, or morning of October 20, Superintendent Long, who had contact with both day and night employees and supervisors, learned from a toolroom supervisor, named, that the employees had decided to take steps not to be represented by the Union and were circulating a petition and this information was repeatedly reported to him by other employees on the 20th, and the night the petition was signed he was told it had approximately 200 signatures. This was reported to management hierarchy with the added information that the circulators of the petition could and would get more signatures. Such information came to him from a circulator of the petition.[27]

Director of Administration Roper was told by various named supervisors and employees at this approximate time that various documents were being circulated in the plant for signature. Roper regularly reported the substance of his conversations with supervisors about employee dissatisfaction with the Union, to President Biggers and Rea and Awalt. He learned from supervisors' reports that employees formerly in favor of the Union were now against it. He also learned on October 20, from Long, and other supervisors of the circulation of a petition concerning the Union. When he learned on the 21st from Rea that an RD petition had been filed he told Rea of the supervisors' reports. On the 21st he heard a variety of reports from each supervisor as to the number who had signed the petition. Some told him a majority of the employees had signed, others that most of the employees had signed. He heard a figure of over 200 signators. Long advised him he had gotten substantially the same reports. Some supervisors[28] told Roper that most of the employees had signed a petition to do away with the Union. Another named supervisor in one of Respondent's fastest growing departments reported there appeared to be quite a lot of hostility to the Union on the part of those under his supervision. Another supervisor reported in the same tenor. Roper's assistant, McCormick, told him that on his tours of the plant, more and more employees were inquiring what to do to get rid of the Union. Security Sergeant Van Felt made the same types of reports to him as the supervisors—the

[26] Inherently fraught with potential violations of the Act.

[27] I credit this witness' testimony completely, particularly his explanation of a sentence which appears in his pretrial affidavit to a Board agent.

[28] Named and included in the rejected offer of proof.

employees didn't want the Union and didn't want a strike.[29] After these many conversations with supervisors, by October 21, Roper was "firmly convinced," based on everything he had heard over a long time, that the "Union no longer represented the majority of our employees." His credited testimony established that he had not merely a doubt but rather certitude in this regard. While such reports might or might not have similarly "convinced" a reasonable man, in good faith, I find they constituted at least a reasonable grounds for a "belief" that a majority of the employees no longer wanted representation. He reported his reports and convictions to Biggers, Rea, and Awalt on October 21, giving them his reason for his convictions. He had made it a practice to talk to all his supervisors everyday.[30] As a result of these conversations he believed the Union had strength in only two departments, involving 30 employees. There were all told about 18 departments. Based on his supervisors' reports, he believed the Union was weak in the other 16.[31] From the supervisors, he heard on October 21 varying figures, as to the number of employees who had signed the RD petition which he never saw. The numbers included 200, 250, and "all of the employees." He also heard that there were nonsigners who wanted to sign but were unable to because they could not locate the petition. It is, and was recognized at the hearing, that such reports were hearsay, but, as I have noted, reasonable men frequently and properly rely on hearsay in their daily decisions and actions. Roper relayed these reports to Biggers, Rea, and Awalt, as they came to his attention.

With reference to Respondent's Counsel's offer of proof as to corroborating testimony of supervisors and employees, General Counsel, in effect, conceded he could not shake their testimony, if given from the stand. He stated he wanted to cross-examine Long and Biggers and did not request direct testimony of the many others, by name. They were available, and I would have permitted their testimony, should General Counsel have made progress with them.

Biggers was present at the hearing when Respondent's counsel made an offer of proof as to his testimony. General Counsel stated he wished to cross-examine Biggers. Biggers took the stand and testified his sworn testimony on direct would be consonant with the offer of proof. General Counsel cross-examined him. The offer of proof, in part was that Roper conveyed the supervisors' and employees' reports to him as Roper testified and that he had personal conversations with Long and other supervisors who advised him as had Roper. In his testimony he, as did Roper, Awalt, and Rea, narrated credibly that they determined not to bargain further, because of a good-faith doubt based on the numerous credited reports of employee dissatisfaction with the Union and the filing of the RD petition which was obviously *the* petition which had been the subject of widespread employee discussion. Biggers, Roper, Awalt, and Rea had numerous conversations in this regard before and particularly on October 21 and 22. They believed a majority of the employees did not want the Union to represent them, based on many discussions among them all concerning the current reports. Biggers made the *final* decision. It was based according to the credited testimony, upon "the good faith doubt"; the "impasse";[32] and the filing of the RD petition.[33] While many discussions among them occurred on October 20, 21, and 22, the ultimate decision not further to bargain with the Union was made by Biggers on October 22 but was in the process of decision throughout those 3 days. Note that Biggers fixed the date as October 21, the day after the filing of the petition.

"Good faith doubt" as a reason for not bargaining was not advanced, as previously noted, until Respondent's answer of May 1. While on another record I might find this long delay proper and conclusive evidence that such doubt did not exist in good faith or in fact, but was a mere afterthought or pretext, I find, on *this* record, that Respondent *did* have a "good faith doubt" of the Union's continued majority and that such has been supported by objective considerations which provided "reasonable ground for a belief that a majority of the employees no longer [desired] Union representation." The cases do not say that such doubt *must* be communicated to the union. They do say an employer *may lawfully* refuse to bargain, after the certification year has run, if he has such good-faith doubt, etc. Such was possessed by this Respondent during the period beginning October 20 and culminating October 22, and the numerous and substantially consistent reports of supervisors and employees and the filing of the RD petition, and the advice of labor consultants constituted "objective considerations" which provided "reasonable grounds" for the belief of Respondent. General Counsel, in his brief, discusses Respondent's grounds of "good faith doubt" and "impasse" only to the extent that he properly points out that the former was not raised until the filing of the answer herein, and the latter was not raised until after the hearing began. He properly points out the inferences which might be drawn from such situation. In no way has he successfully attacked the credit I have attached to Respondent's witnesses' testimony, particularly with respect to the existence of a "good faith doubt" when it refused to continue bargaining with the Union.

F. *As of the Time Respondent Refused To Continue To Bargain With the Union, Did an Impasse in the Bargaining Negotiations Exist, So as To be a Valid Defense to Respondent in Response to the Allegation That It Unlawfully Refused to Bargain Since October 20, and Unlawfully Refused To Provide Necessary Information to the Union, etc.?*

Since I have found the established "good faith doubt" of Respondent to be a complete and valid defense to Respondent in this case, I find little necessity to treat with this issue in great detail. I find there was *no impasse*

[29] There had been an affirmative strike vote at the union meetings on October 14 and 15.

[30] I assume he considered them each reliable or he would have had other ones.

[31] While there are other obvious errors in the record, I particularly correct that on p. 377, l. 12, and substitute "not" for the word "now."

[32] More on this grounds later.

[33] This ground standing alone has already been considered. I find it has weight, however, when considered along with the other bases for a good-faith doubt and the absence of any unfair labor practices or union animus.

existing as of the time of Respondent's refusal to continue bargaining with the Union.

There is no need to review or set forth details of relations between Respondent and the Union from the latter's certification until the refusal to bargain. There was hard bargaining by each side at all times. There is no evidence of bargaining in bad faith. I do not find it was the only bone of contention, but the parties strongly attempted to maintain their respective positions on union security throughout, Biggers, personally, having strong convictions opposed to "compulsory" unionism and the Union wanting union security. The record abounds with testimony as to meetings on September 29, October 7, 12, and 14 and regarding alleged phone conversations between Rea and Scott on October 8 and 15 and other dates. I find it unnecessary to consider these in any detail herein.[34] It suffices that Respondent made what it called a "last and final" offer to the Union, containing a form of "maintenance of membership clause" on October 14. On October 14 and 15, Scott presented the offer to employees at different union meetings for different shifts. I credit Scott's uncontradicted testimony that the employees raised many questions about Respondent's offer and voted to reject it. The questions were substantially the same at each meeting. On October 15, Scott advised Respondent by a hand delivered letter that Respondent's October 14, offer had been presented to the employees for consideration and had been rejected. Respondent was further advised that employees had asked questions about Respondent's proposal which could not be answered by the Union. Respondent was asked to furnish the Union, so that negotiations could continue, with a variety of information I find no need to set forth, but which I find was necessary for the Union to fulfill its obligations as a bargaining representative. The letter asked that the information be provided by October 22 and requested a negotiation meeting be held on October 27.

On October 21, Rea replied in writing to the above letter. Much of the requested information was set forth in his three-page reply.[35] Among many other things, Rea stated Respondent was supplying the Union with all the information it had available. Explanations were given as to some requests. Rea concluded by saying Respondent had made an attempt to provide information requested but if the Union desired additional information "please do not hesitate to contact our office." Such an exchange of correspondence, I find, effectively belies the existence of an impasse.

Respondent's counsel insists there was an irreconcilable difference between the parties as to union security which resulted in an "unbreakable impasse." To the contrary, I credit Scott's testimony that union security was only one of the issues as to which the parties differed and that he never stated in October that the parties had reached an impasse. To the contrary, Scott had an open mind as to union security[36] but it was dependent on the contract as a whole.[37] While the parties may have appeared to be far apart, consideration of all the information lawfully sought by the Union, might have resulted in a full meeting of the minds. Respondent does not claim Biggers was recalcitrant or had his mind closed and I do not find Scott or his committee were. There was no impasse on October 21. Rea's letter of that date reflects only a willingness to continue bargaining and itself was a part of the bargaining process. The documentary evidence as to the state of mind of the parties far outweighs in my mind the recollections of the witnesses as to who said what to whom on and around and between October 14 and 21, with respect to "impasse."

I do not find that Respondent's counsel raised "impasse" as a mere makeweight or pretext, but rather in good faith, but I find the probative and substantial evidence does not support his defense. Strong feelings or positions or demands do not make an impasse. Neither does hard bargaining. Here the exchange of correspondence demonstrates there might well have been another opening in the alleged blind alley or impasse should good-faith bargaining have continued. In crediting Scott to the extent I have, I have been well aware of his understandable, to me, lack of memory or uncertainty as to what transpired at some meetings, etc. His testimony aside, Rea's October 21 letter in reply to Scott's October 15 letter, establishes that far from having reached an impasse, as of the time the letter was written on October 21 the parties were still in the *process of bargaining.* This correspondence makes immaterial, or certainly subject to considerable question and doubt the testimony of Rea and Awalt either denied or not remembered by Scott, as to statements allegedly made by him in phone conversations between October 14 and 21.[38] References to Scott "doing his thing" or replaying "the same scenario" are insubstantial in light of the documentary evidence. Early herein, I found Scott did not in a phone call with Rea on October 15 agree the parties had reached an impasse, and simultaneously cause the October 15 letter to be written and hand delivered. If such had any basis in fact, Rea would not have written his October 21 reply, but instead would then or earlier have referred to the parties' "agreement" that an "impasse" had been reached. Respondent's counsel vigorously attacks the credibility of much of Scott's testimony. I have studied it carefully and observed his demeanor which impressed me favorably. I do not find Rea or Awalt concocted fabrications but find they were mistaken in some of the statements they attributed to Scott. The latter's memory was not perfect, admittedly, and in many respects, understandably.

Concluding Findings

For the reasons above explicated, some at length, I conclude the mere filing of the RD petition to the knowledge of Respondent did not justify its refusal to bargain with the Union.

I conclude Respondent's "good faith doubt" as above set forth, under all the circumstances including the filing of the RD petition, furnished Respondent with reasonable grounds for its belief that the Union had lost its majority

[34] Of course, I have carefully considered the record with respect to them.

[35] G.C. Exh. 3 in evidence.

[36] Not necessarily conveyed to Respondent.

[37] Scott's request of October 15, and Rea's reply of October 21, were followed up by a request for information not provided in Rea's October 21 letter, by a letter of October 23 to Respondent from the Union's lawyer.

[38] Even Rea was not sure there was a conversation with Scott on October 23.

status. Consequently, I conclude Respondent did not violate Section 8(a)(5) or (1) of the Act when it refused further to bargain or otherwise negotiate with the Union as its employees' agent.

I finally conclude that Respondent and the Union did not reach a bargaining impasse in October as contended by Respondent.[39]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of the Act.
2. The Union has been at all material times a labor organization within the meaning of the Act.
3. General Counsel has failed to prove by a preponderance of the credible and substantial evidence that during material times, Respondent has violated Section 8(a)(5) and (1) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the Board enter the following:

ORDER[40]

General Counsel's complaint herein is dismissed in its entirety.

[39] Its counsel makes no reference in his brief to Rea's letter of October 21.

[40] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.